

## Juvenile Court Standing Order 9-20

### Jury Trials Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic

Pursuant to the Supreme Judicial Court's Fourth Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic, effective September 17, 2020 (SJC-Sep. 17 Order), the Juvenile Court issues this standing order regarding jury trials held in the Juvenile Court during the pandemic. This standing order is effective October 26, 2020. This standing order will remain in effect until further order of the court.

- I. Jury trials.** No jury trials shall be conducted before October 26, 2020. Beginning on that date, jury trials shall resume on a limited basis, in accordance with Phase 1 of the resumption of jury trials, as recommended by the Jury Management Advisory Committee (JMAC).<sup>1</sup> See SJC-Sep. 17 Order, par. 9.

**A. Phase 1.** Phase 1 trials will occur in a small number of locations, determined by the Chief Justice of the Juvenile Court in consultation with the Juvenile Court First Justices and with the Chief Justice of the Trial Court and Chief Justices of other Trial Court departments affected, limited to one trial at a time in each location, and will consist of juries of six (plus alternates).

Only delinquency matters where the juvenile is not in custody will be eligible to be heard in the Juvenile Court during Phase 1.

1. **Process for Identifying Phase 1 Trials.** The following provisions govern Phase 1 trials in Juvenile Court.

**(a) Eligible Cases.** Each Juvenile Court Office of the Clerk-Magistrate will provide a list of all delinquency cases scheduled for jury trial or jury trial status where the juvenile is not in custody to the First Justice.

**(b) Pre-Trial Conference to Determine Trial Readiness.** The cases shall be scheduled as soon as possible for a pre-trial conference to determine trial readiness. It is essential that the First Justice or conference judge conduct an in-depth conference shortly before the trial date to address all potential pre-trial matters, identify any obstacles, gauge any potential for settlement, discuss the manner in which the trial will proceed, including the presentation of evidence, resolve legal issues pre-trial to the extent possible, and take all

---

<sup>1</sup> Plans and expectations concerning the resumption of jury trials in Phase 1 and later phases may be adjusted, if significant changes occur in the rate of COVID-19 transmission in the Commonwealth.

steps possible to ensure that the case is ready for trial and will proceed to trial on the scheduled date.

At the pre-trial conference, to determine eligibility and readiness for a jury trial in Phase 1, the following factors shall be reviewed by the parties:

- (i) all discovery is complete;
- (ii) all motions have been decided;
- (iii) no expert witnesses will be called;
- (iv) no co-defendants;
- (v) all efforts at resolution of the matter have been exhausted;
- (vi) number of expected witnesses is low;
- (vii) nature of case and offense(s) does not require a large jury pool;
- (viii) number of interpreters needed;
- (ix) any particular witness concerns and
- (x) all parties, counsel, and witnesses are ready and available to proceed.

**(c) Selection of Trial Date.** After the conference has been held and a determination regarding trial readiness has been made by the conference judge, the conference judge or the First Justice shall set a jury trial date. It is the responsibility of the First Justice to ensure that the proposed trial date for the matter has been selected after review and consultation with the Regional Administrative Justices (RAJs) and First Justices of the other effected Trial Court Departments in that specific court location, as well as with security and facilities directors for the location. The First Justice shall notify the Chief Justice of the Juvenile Court regarding all selected jury trial dates.

**(d) Prioritization Factors.** If the number of cases meeting the trial readiness factors exceeds the number of available dates at a court location, the First Justice shall prioritize the cases based on the factors listed in Section I. (B)(1)(b) of this order.

**B. Phase 2.** The Juvenile Court will schedule priority cases for Phase 2 trials to begin in February 2021, with trial dates subject to revision after the SJC reviews the JMAC's evaluation of Phase 1. See SJC–Sep. 17 Order, par. 9. Phase 2 trials to be scheduled, and the locations in which Phase 2 trials will be held, will be

determined with the approval of the Chief Justice of the Juvenile Court in consultation with Juvenile Court First Justices and with the Chief Justice of the Trial Court and the Chief Justices of other Trial Court departments affected.

**1. Process for Identifying Trials for Phase 2.** The following provisions govern Phase 2 trials in the Juvenile Court.

**(a) Scheduling of Jury Trials.** Each First Justice will oversee the scheduling of jury trials, exercising discretion based on the factors set forth below, giving due consideration to the goals of achieving timely resolution of each matter to the extent feasible while minimizing risk to all participants, including jurors and court personnel. The First Justice will consult with bar leaders and will coordinate with First Justices or RAJs of other Trial Court Departments in the courthouse or court complex, as well as Security and Facilities Department managers, regarding use of spaces, personnel, and other resources.

**(b) Prioritization Factors.** All youthful offender and delinquency matters scheduled for jury trial shall be given prioritization based on the following factors:

- (i.) Any applicable statutory prioritization.
- (ii.) The seriousness of the offense charged.
- (iii.) Whether and for how long the juvenile has been in custody. For this purpose, any period of bail revocation shall be excluded.
- (iv.) Any previously issued judicial order for speedy trial.
- (v.) Whether and when the juvenile has objected to any continuance of a trial date.
- (vi.) Whether and when a trial of the case has begun and concluded with a mistrial.
- (vii.) Whether a child, elderly person, or a person whose health or medical condition warrants special consideration is an alleged victim or necessary witness.
- (viii.) Whether any alleged victim or necessary witness is expected to become unavailable due to illness, military deployment, or other unavoidable reason.

- (ix.) If the juvenile is not in custody, whether the defendant is subject to pre-trial conditions that impose substantial constraints on the juvenile's liberty.
- (x.) The length of the trial, and any potential to minimize necessary length by the use of stipulations or videoconference testimony for some witnesses.

**(c) Pre-Trial Conference to Determine Trial Readiness.** Following the prioritization of cases as provided for in Section I (B)(1)(b) of this order, a pre-trial conference to determine trial readiness shall be scheduled and held in accordance with Section I (A)(1)(b) of this order for determining jury trial dates in Phase 2.

**C. Scheduling of Other Jury Trials.** All jury trials that were scheduled to commence between March 14 and September 4, 2020, that, by certain SJC orders, were continued to a date no earlier than September 8, 2020, and that are not tried during Phase 1, are further continued to a date no earlier than the date of the commencement of Phase 2. See SJC–Sep. 17 Order, par. 10 & n.5. Trial continuances ordered by the SJC are excluded from speedy-trial calculations under Mass. R. Crim. P. 36. See SJC–Sep. 17 Order, par. 10.

Date: October 8, 2020  
Effective: October 26, 2020

/s/ Amy L. Nechtem  
Hon. Amy L. Nechtem  
Chief Justice of the Juvenile Court